

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DEC 21 '94
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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Implementation of Sections 3(n)) GN Docket No. 93-252
and 332 of the Communications Act)
)
Regulatory Treatment of Mobile)
Services)
)
Amendment of Part 90 of the) PR Docket No. 93-144
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)
)
Amendment of Parts 2 and 90 of the) PR Docket No. 89-553
Commission's Rules to Provide for)
the Use of 200 Channels Outside the)
Designated Filing Areas in the 896-901)
MHz and 935-940 MHz Band Allotted to)
the Specialized Mobile Radio Pool)
To: The Commission

PETITION FOR RECONSIDERATION

The Industrial Telecommunications Association, Inc. ("ITA"), pursuant to Section 1.429 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), respectfully requests that the Commission reconsider the decision reached in its Third Report and Order in the above-referenced proceedings regarding the implementation of new FCC Form 600 for the Private Mobile Radio Services.¹

¹ Third Report and Order (FCC 94-212), adopted August 9, 1994, released September 23, 1994, _____ FCC Rcd. _____ (1994).

I. BACKGROUND

1. In a Further Notice of Proposed Rule Making adopted on April 20, 1994², the Federal Communications Commission indicated its intent to adopt a single application form for all of the mobile services regulated by the Commission, both Commercial Mobile Radio Services ("CMRS") and Private Mobile Radio Services ("PMRS"). The Initial Regulatory Flexibility Analysis ("IFRA") included in the Further Notice did not discuss in any respect the regulatory burden that the proposed new form would impose on applicants for PMRS facilities.

2. On August 9, 1994, the FCC adopted its Third Report and Order in the instant proceeding. This Third Report and Order officially implemented FCC Form 600 and stated that the form would be used for all mobile services, both CMRS and PMRS.³ The Third Report and Order included a Final Regulatory Flexibility Analysis ("FRFA"). This Final Regulatory Flexibility Analysis did not attempt to assess, in any way, the regulatory burden that imposition of the new form caused for PMRS applicants.

² Further Notice of Proposed Rule Making (FCC 94-100), GN Docket No. 93-252, released May 20, 1994 (hereinafter "Further Notice").

³ The FCC initially established January 2, 1995 as the implementation date for Form 600 for all affected applicants. By Public Notice dated December 13, 1994, the Wireless Telecommunications Bureau announced that applicants other than PCS applicants could continue to use the existing forms, FCC Form 574 for PMRS applicants and FCC Form 401 for CMRS applicants, until April 2, 1995.

II. ARGUMENT

3. With its decision to require PMRS applicants to use the new FCC Form 600, the Commission has imposed an undue burden and substantive new requirements on users of the private radio spectrum. FCC Form 574, the form that the Commission currently requires for PMRS station applications, is one page in length. The new form consists, apparently, of eight different schedules and two basic data element forms -- a total of 13 pages.⁴

4. The Commission's Final Regulatory Flexibility Analysis neglects to consider, in any respect, the impact of the new form on PMRS applicants. The Commission has, therefore, failed to comply with the letter and spirit of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 503.

III. DISCUSSION

A. The New Form Significantly Increases The Regulatory Burden on PMRS Applicants.

5. New FCC Form 600 significantly increases the regulatory burden placed on applicants for stations in the Private Mobile

⁴ It is ITA's understanding that the FCC Form 600 approved by the Commission when it adopted the Third Report and Order is not the same form ultimately approved by the Office of Management and Budget. The form approved as part of the Third Report and Order was 15 pages long. On or about December 21, 1994, the Commission disseminated a revised Form 600 that was 13 pages long.

Radio Services. Clearly, the new Form 600 has been developed to accommodate, first and foremost, the Commission's informational needs regarding CMRS stations. In both form and substance, the new form is directed at CMRS applicants. In developing the new form, the FCC has failed to recognize or reflect the fact that the informational requirements pertaining to the Private Mobile Radio Services are significantly less than for Commercial Mobile Radio Services.

6. In its Comments filed in response to the Further Notice, ITA advised the Commission that "[a] form that is geared to facilitate the licensing of commercial providers may be confusing to entities seeking to license internal-use systems."⁵ ITA asked that the FCC "make it as easy as possible for [PMRS] applicants to complete the form." By any standard, the resulting form will not be easy for the vast majority of PMRS applicants to complete. The mere process of wading through thirteen or more pages of form material will be difficult in itself.

7. Moreover, if the FCC proceeds with its current plans to place Form 600 into use, PMRS applicants will have to complete approximately twenty-one new data elements not currently required by Form 574. Some of these new data requirements impose relatively little burden. Others will require substantial time and effort to complete. To illustrate, PMRS applicants are not

⁵ ITA Comments filed June 20, 1994, p. 9.

currently required to identify the tower owner's name and telephone number. In some cases, though the name of the site manager may be readily known, it will be difficult for applicants to readily ascertain the actual owner of the site. At present, PMRS applicants are not required to state whether their applications should be classified as "MINOR" under Section 309 of the Communications Act. Many PMRS applicants will have to go through considerable expense to ascertain the requirements of Section 309, perhaps requiring legal assistance. Additionally, PMRS applicants are not currently required to respond to questions regarding alien ownership. There are other examples of new requirements as well.

B. The Commission's Decision To Require PMRS Applicants to Use Form 600 Violates the Regulatory Flexibility Act of 1980 and the Commission's Own Utterances Regarding Compliance With That Law.

8. In the Initial Regulatory Flexibility Analysis performed by the FCC in fulfillment of the requirements of the Regulatory Flexibility Act, the Commission noted that the "full extent of [the proposed] changes cannot be predicted until various other issues raised in the proceeding have been resolved."⁶ The FCC stated that, "[a]fter evaluating the comments filed in response to the Further Notice, the Commission will examine further the impact of all rule changes on small

⁶ Appendix B to the Third Report and Order.

entities and set forth its findings in the Final Regulatory Flexibility Analysis."⁷

9. Of the estimated 12,000,000 private land mobile radio transmitters in operation in the United States, a sizeable proportion are operated by small entities licensed in the Private Mobile Radio Services. The new form will have a pronounced impact on these entities. Yet, nowhere in the Final Regulatory Flexibility Analysis is there any indication that the Commission has actually examined the impact of the rule changes on small PMRS entities. The only reference to "small entities" in the Final Analysis occurs in the context of CMRS licensees, when the FCC states "[t]he regulatory burdens we have retained for all CMRS licensees, including small entities, are necessary to carry out our duties under the Communications Act of 1934, as amended."

10. The Final Regulatory Flexibility Analysis never mentions, or evidences any consideration at all, of small PMRS licensees. Clearly, as with the Form 600, the Final Regulatory Flexibility Analysis is tilted entirely toward CMRS licensees. Such an approach is unfair to PMRS licensees and a violation of the applicable law. This blatant disregard for the impact upon small PMRS licensees occurred in spite of the Commission's clear and unequivocal commitment to "examine further the impact of all rule changes on small entities and set forth its findings in the

⁷ Id.

Final Regulatory Flexibility Analysis."

IV. CONCLUSION

11. For the reasons discussed above, ITA believes that the FCC's introduction of the new Form 600 for use by PMRS applicants is ill-advised, contrary to the public interest and in violation of relevant federal law. ITA therefore requests the Commission to reconsider that aspect of the Third Report and Order in which the Commission decided to require PMRS applicants to use the new form. As structured, the form is not conducive to use by PMRS applicants. ITA urges the Commission to modify the form to make it more compatible with the needs and requirements of the Private Mobile Radio Services or, alternatively, to reinstitute the use of Form 574 for PMRS applicants.

WHEREFORE, THE PREMISES CONSIDERED, the Industrial Telecommunications Association, Inc. respectfully submits this Petition for Reconsideration and urges the Federal Communications Commission to act in accordance with the position expressed herein.

INDUSTRIAL TELECOMMUNICATIONS
ASSOCIATION, INC.

By: 

Mark E. Crosby, President
and Chief Executive Officer

By: 

Frederick J. Day, Esq.
Executive Director
Government Relations

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